

**Department of  
Veterans Affairs****Memorandum**

Date: SEP 17 2021  
From: Secretary (00)  
Subj: Benefits Eligibility for Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ+) Former Service Members (VIEWS 5810856)  
To: Under Secretaries, Assistant Secretaries and other Key Officials

1. This memorandum provides guidance to Department of Veterans Affairs (VA) employees pertaining to the benefits eligibility of LGBTQ+ former Service members who may be still awaiting military correction upgrades to their Department of Defense Form DD-214, *Certificate of Release or Discharge from Active Duty*. To ensure that every Veteran entitled to the benefits and health care they have earned receives what they are owed under law, effective immediately VA adjudicators shall find that all discharged Service members whose separation was due to sexual orientation, gender identity or human immunodeficiency virus (HIV) status are considered "Veterans" who are eligible for VA benefits; so long as the record does not implicate a statutory or regulatory bar to benefits. This policy statement does not represent a change in law. Veterans who were discharged under "Don't Ask, Don't Tell" (DADT) alone have been generally eligible for benefits under current statute and regulation; however, this policy reiterates what constitutes eligibility for benefits under law.
2. During fiscal year (FY) 2022, the Veterans Benefits Administration (VBA) will carefully evaluate the character of discharge program by providing additional internal review of determinations that would find a claimant's discharge dishonorable for VA purposes. VBA will conduct an analysis of such character of discharge determinations and validate any such decisions before promulgation. This review will also be an opportunity for VBA to identify any training needs for claims adjudicators.
3. VBA's Adjudication Procedures Manual provides an overview of the Character of Discharge determination process. at M21-1, Part X, Subpart iv, 1.A.1.e (Overview of the COD Determination Process). In accordance with Step 1 of the process, VBA adjudicators shall still send requests to the service department for all available records, including service treatment records, personnel records and records of proceedings pertaining to the discharge.
4. When evaluating the basis of discharge, VA adjudicators shall consider the claimant's statements regarding the facts and circumstances surrounding the discharge. VA adjudicators shall pay close attention to the claimant's statement. A claimant's statement asserting discharge was based on LGBTQ+ identity and/or HIV status may constitute sufficient evidence for purposes of demonstrating that there is no factual basis for a statutory or regulatory bar to benefits. When there is conflicting evidence, VA adjudicators must consider all evidence of record, but may, as

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appropriate in a case, find the claimant's lay statement more credible or probative than other evidence of record.

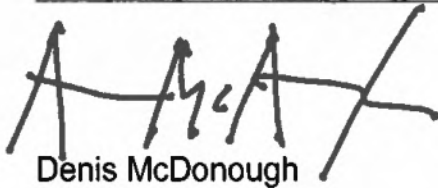
5. VBA will amend M21-1, Part X, Subpart iv, 1.A.2, to incorporate guidance from the table below, as well as make any additional updates to the M21-1 as necessary:

If the Claimant's DD-214...	...Then...
... indicates discharge was based on homosexual conduct, gender identity or HIV status, and the record implicates no regulatory or statutory bars	Find the claimant's service honorable for VA purposes.
...does not indicate discharge was based on homosexual conduct, gender identity or HIV status, but claimant alleges that discharge was based on LGBTQ+ identity and/or HIV status, and the record does not clearly establish regulatory or statutory bar	Find the claimant's service honorable for VA purposes if, weighing the claimant's lay statement against other evidence of record regarding the basis for discharge, the claimant's lay statement is more credible or probative.
... indicates discharge was based on homosexual conduct, gender identity or HIV status or claimant alleges that discharge was based on LGBTQ+ identity and/or HIV status, and the record implicates regulatory or statutory bars	Evaluate whether the regulatory or statutory bars preclude benefits eligibility—taking into account the fact that the regulatory bar of "Homosexual acts involving aggravating circumstances or other factors affecting the performance of duty" only applies in situations akin to child molestation, homosexual prostitution, homosexual acts or conduct accompanied by assault or coercion; and homosexual acts or conduct taking place between Service members of disparate rank, grade or status when a Service member has taken advantage of his or her superior rank, grade or status.
For any character of discharge determination made in FY 2022 that would result in the claimant's discharge being found dishonorable for VA purposes, regional offices are directed <i>prior to finalizing the determination</i> to send the case to the CS Quality Review team for validation.	

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6. Questions can be directed to VBA's Compensation Service Policy Staff at  
211 [policy.vbavaco@va.gov](mailto:policy.vbavaco@va.gov).



Denis McDonough